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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

FILE:

Office: LOS ANGELES, CA

Date: NOV 03 2004

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.



Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of the Philippines who was found inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having gained admission to the United States by fraud or willful misrepresentation. The applicant is the beneficiary of an approved I-360 Petition for Amerasian, Widow or Special Immigrant. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her three United States citizen children and her lawful permanent resident fiancée.

The District Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the I-601 Application for Waiver of Grounds of Inadmissibility accordingly. *Decision of the District Director*, dated September 4, 2003.

On appeal, counsel contends that because the applicant is the approved beneficiary of an I-360 Petition for Amerasian, Widow or Special Immigrant as a self-petitioning abused spouse of a United States citizen, the District Director should have considered hardship to the applicant and her children. Instead, the District Director denied the waiver because the applicant had not demonstrated extreme hardship to her United States citizen spouse.

In support of the applicant's appeal, counsel submitted a brief; personal statements from the applicant and her fiancée; I-360 approval notice; divorce decree; and birth certificates for the three children. Counsel contends that the applicant's removal from the United States would cause extreme hardship to the applicant and her three United States citizen children. The entire record was considered in rendering this decision.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The record reflects that on or about April 27, 1989, the applicant used a passport with the name "Marlene Angeles" to obtain admission to the United States, making her inadmissible under the Act.

Section 212(i) of the Act provides that:

The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien or, in the case of an alien granted classification under clause (iii) or (iv) of section 204 (a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B),

the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

Sec. 204(a)(1)(A) of the Act provides:

(iii) (I) An alien who is described in subclause (II) may file a petition with the Attorney General [Secretary] under this clause for classification of the alien (and any child of the alien) if the alien demonstrates to the Attorney General [Secretary] that--

(aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and

(bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

(II) For purposes of subclause (I), an alien described in this subclause is an alien--

(aa)(AA) who is the spouse of a citizen of the United States;

The applicant filed her I-360 petition as the abused spouse of a United States citizen under Section 204(a)(1)(A)(iii) of the Act. Section 212(i) authorizes the Secretary to waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien granted classification under clause (iii) of section 204(a)(1)(A) if the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified parent or child.

Accordingly, as the beneficiary of an approved I-360, the applicant must demonstrate extreme hardship to herself or to her United States citizen children. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship "is not . . . fixed and inflexible," and whether extreme hardship has been established is based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) provided a list of non-exclusive factors to determine whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of the departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* At 566. The BIA has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine

whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

Each of the *Cervantes* factors listed above is analyzed in turn. First analyzed is the financial impact of the applicant's departure from the United States. The applicant's three children are aged one, five, and ten. The applicant shares custody of the ten-year old with her ex-husband, [REDACTED]. The applicant's fiancée is the father of the other children; the applicant and her fiancée share the support of these children. The applicant works and makes a substantial contribution to the support of her children. Her departure would adversely affect the financial status of her children.

The next *Cervantes* factor is country conditions in the Philippines. Counsel's brief cites the 2002 United States Department of State Country Reports on Human Rights Practices for the Philippines. According to the report, approximately forty percent of the population lives below the poverty line, with an even higher figure in rural areas. Violence against women and child abuse are also listed as problems. The applicant stated that she would not be able to find a job in the Philippines, but that even if she could, her income would not support her family. Clearly, if the applicant moved to the Philippines, her salary would not be comparable to what she earns in the United States. Neither counsel nor the applicant addressed how the incidence of violence against women in the Philippines would specifically cause hardship to the applicant.

Another *Cervantes* factor is significant health conditions. Neither counsel nor the applicant referred to any health problems suffered by the applicant or her children.

The final *Cervantes* factor is family ties in the United States and the Philippines. The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. The Ninth Circuit Court of Appeals has held that separation from family may be "[t]he most important single [hardship] factor," and "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted).

The applicant divorced [REDACTED] because he was abusing her; they share legal custody of their United States citizen child [REDACTED] who is ten years old. [REDACTED] stated that he will not allow [REDACTED] to leave the United States with the applicant. If the applicant is not allowed to stay in the United States, Mr. [REDACTED] will have complete control over [REDACTED]. Because [REDACTED] was abusive to the applicant and has clearly stated that he will not allow [REDACTED] to leave the United States, this is not a straightforward case of hardship caused by separating family members. The file contains a June 20, 2001 sworn statement that [REDACTED] gave to the Immigration and Naturalization Service (now Citizenship and Immigration Services) regarding his marriage to the applicant. **In his statement, [REDACTED] expressed anger toward the applicant and blamed her for the breakup of the marriage. The final sentence in the statement reads "[S]he doesn't deserve anything at all."** Separating [REDACTED] from her mother could cause irreparable harm to [REDACTED] because there would be no one to offset the influence of an angry father who takes no responsibility for the breakdown of the marriage.

The applicant survived an abusive marriage and is engaged to a lawful permanent resident of the United States. The applicant and her fiancée have two United States citizen children. The applicant's fiancée has stated that if the applicant is forced to leave the United States, he will not allow the children to leave with her. These children are aged one and five. Separating them from their mother would cause hardship to the applicant and her children.

The applicant has lived in the United States for fifteen years. She has a steady job. Returning the applicant to the Philippines, where she and her parents lived in poverty, would create hardship to her. Additionally, she would not be able to send any money to the United States to help support her children.

The totality of the record, particularly the effect of the applicant's departure on her United States citizen daughter Angelina, demonstrates that the applicant's children would suffer extreme hardship if their mother is removed to the Philippines.

The grant or denial of the above waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as he may by regulations prescribe.

The favorable factors in this matter are the extreme hardship to the applicant's children, the passage of more than fifteen years since the applicant's immigration violation, letters in support of the applicant's character, and the applicant's employment history. The adverse factors in this matter are the applicant's willful misrepresentation to officials of the U.S. Government in seeking to obtain admission to the United States. The favorable factors outweigh the adverse factors; accordingly, a favorable exercise of the Secretary's discretion is warranted in this matter.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i), the burden of establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.